

State of New Jersey
DEPARTMENT OF EDUCATION
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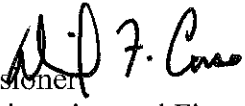
CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER D. CERF
Acting Commissioner

October 20, 2011

TO: District Superintendents
Charter School Leaders
President, Board of Education/Advisory Board

FROM: David F. Corso 
Assistant Commissioner
Division of Administration and Finance

SUBJECT: P.L. 2011, c. 70 (N.J.S.A. 52:14-7) – “New Jersey First Act”

Effective September 1, 2011, in accordance with the “New Jersey First Act” P.L. 2011, c.70, all employees of State and local government, including school districts or an authority, board, body, agency, commission, or instrumentality of the district, must reside in the State of New Jersey, unless exempted under law. Employees who already work for State or local government, including school districts or an authority, board, body, agency, commission, or instrumentality of the district, as of August 31, 2011, but do not live in New Jersey are **not** required to move to New Jersey. However, employees who are hired on or after September 1, 2011 must reside in New Jersey. A newly hired employee who does not reside in New Jersey will have one year after the date employment begins to relocate residency to New Jersey. An employee who does not do so is subject to removal from office, position or employment.

A number of questions have been raised regarding interpretation and implementation of the new residency law, N.J.S.A. 52:14-7. The following Q&A is a compilation of those questions and answers in response.

1. When does the "New Jersey First Act" become effective?

September 1, 2011.

2. Is there a "grandfather" provision in the law that allows employees who are already working for the State or local government to continue living out of state?

Yes. The statute provides that any "person, regardless of the office, employment, or position, who holds an office, employment, or position in this State on the effective date [Sept. 1, 2011] of P.L.2011, c.70 but does not have his or her principal residence in this State on that effective date shall not be subject to the residency requirement of this subsection while the person continues to hold office, employment, or position without a

break in public service of greater than seven days." Thus, if a person is already an employee on September 1, 2011, and lives out of state, he or she is not required to move into New Jersey.

3. Can a current employee move out of state prior to the effective date (September 1, 2011) of the law?

Yes. As long as the change in residency takes place before the effective date of the law, September 1, 2011, a current employee may move out of the state and be eligible for the "grandfather" provision as set forth in question 2 above, which says that a person who holds employment but does not have residency in New Jersey **on the effective date** of the law shall not be subject to the residency requirement.

4. Can a current employee who lives in New Jersey move out of state after the effective date of the law?

No. The language cited above, that a person who holds employment but does not have residency in New Jersey on the effective date of the act shall not be subject to the residency requirement, requires that all others **are** subject to the requirement. This includes any person who was a New Jersey resident on the effective date of the act but then later moved out of state.

5. If an employee who lives in New Jersey and is employed on September 1, 2011 moves out of state after September 1, 2011, is that employee immediately subject to removal or does that employee have a window of time to move back in? If so, how long is that window? Is it one year, the same as new employees?

A current employee who moves out of state after September 1, 2011 does not get a window of time to move back in. The statute states that the one-year grace period is from the time the employee takes his office, position or employment, not one year from the time he or she moves out of state. The employee has to get an exemption before he or she moves, if possible. If he or she cannot get the exemption, he or she should not move. An employer, however, may want to give the employee notice to move back to New Jersey before initiating disciplinary action to remove them.

6. Will a current employee be able to apply for an "exemption" to move out of state after the effective date of the new law?

Yes. The employee will be able to request an exemption from the applicability of the law on the basis of "critical need or hardship" from the committee, which is composed of three persons appointed by the Governor, a person appointed by the Speaker of the General Assembly, and a person appointed by the President of the Senate. The law does not limit the ability to apply to the committee for an exemption to only non-residents or new hires. However, if a current employee wishes to move out of state, he or she should apply in advance for an exemption, rather than move and then ask for the exemption, since once the current employee moves out of state, the law applies to him.

7. **If a person is given a letter prior to September 1, 2011 offering them an office, position or employment and informing him that he is being hired pending a background, physical or psychological investigation, and he does not start working until after September 1, what date is considered his start date for purposes of the residency law? If he lives outside New Jersey, is he subject to the residency requirement if his offer of employment was made prior to September 1?**

The date which triggers the application of the "grandfather" provision is the date he actually starts work, not the date he received the offer of employment. If he does not begin actually working until after September 1, the "grandfather" provision does not apply to him.

8. **What employees are covered by the residency law? Does the residency law apply to temporary employees (TES)? Does it apply to part-time employees? Does it apply to employees of temporary agencies who are assigned to work at State locations? Does it apply to unclassified employees?**

The statute applies to all State and local government and school district employees holding an office, position or employment, with two very narrow exceptions: a) certain faculty members of the State colleges and universities as specified in the law; and b) a State employee whose position requires the person to spend the majority of his or her working hours in a location outside of New Jersey.

No distinction is made between types of appointments, that is, temporary appointments or part-time appointments. All appointments are treated similarly under the law - that is, New Jersey residency is required of all individuals on State or local or school district payroll.

By contrast, those individuals who are employees of temporary agencies under contract with State and local governmental entities and school districts are not subject to the law. No contractual or other type of relationship exists between those individuals and the public entity, other than the fact that they are assigned to work at that location. The individuals' salaries are paid by the private temporary agency and the terms of employment are governed by that relationship. Therefore, those individuals who are stationed to work at public offices are not required to live in New Jersey.

9. **How is residency defined? What process should be used to initially declare residency? If an issue arises as to an employee's residency, does the employer have a duty to investigate the employee's residency status?**

Residency is defined in the statute as meaning "the state (1) where the person spends the majority of his or her nonworking time, and (2) which is most clearly the center of his or her domestic life, and (3) which is designated as his or her legal address and legal residence for voting." Upon the appointment of a new employee, the school district should request documentation of the person's residence, or a certification of State residency signed by the employee which includes the above statutory language. If the

employer is aware that an employee may not reside in New Jersey despite certifying or documenting that he or she is in compliance with the law, then it should investigate the issue to determine whether or not the employee is actually a resident of New Jersey.

10. What is the role of the employer in applying for an exemption from the residency requirement on behalf of an employee?

The statute allows an employee to request an exemption from the provisions of the residency law "on the basis of critical need or hardship." It provides that "any person" may request the exemption. If the employer wishes to assist in the exemption application process on behalf of the employee, it may do that, but the law does not require its involvement. The employee can apply on his own behalf and present his case regarding critical need or hardship to the committee.

11. Is there a recommended statement that employers should use to inform new or prospective employees of the new residency requirement?

School districts may advise prospective and new hires of the following: "Effective September 1, 2011, all employees of school districts must reside in the State of New Jersey, unless exempted under law. If you already work for the school district as of September 1, 2011, and you do not live in New Jersey, you are not required to move to New Jersey. However, if you begin your office, position or employment on September 1, 2011 or later, you must reside in New Jersey. If you do not reside in New Jersey, you have one year after the date you take your office, position or employment to relocate your residence to New Jersey. If you do not do so, you are subject to removal from your office, position or employment."

I will keep you advised of any further information as it becomes available.

DFC:PJC/ab-state residency q&a

c: Executive County Superintendents

County School Business Administrators